

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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AUG -7 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0193-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JASON DEJESUS,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause Nos. CR2008116090001DT and CR2008147175001DT

Honorable Kristin Hoffman, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Linda Van Brakel

Phoenix
Attorneys for Respondent

Jason DeJesus

Tucson
In Propria Persona

K E L L Y, Judge.

¶1 Petitioner Jason DeJesus pled guilty in two separate matters to possession of a dangerous drug and armed robbery. The trial court sentenced him to presumptive, concurrent prison terms, the longer of which is 10.5 years. DeJesus filed a petition for

post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., which the court summarily dismissed. This petition for review followed. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 Arguing that the factual basis to support his guilty pleas was insufficient because it was based on “just conclusions,” rather than facts, DeJesus asks that we vacate his convictions. A trial court may rely on the extended record in determining whether a factual basis existed for the plea. *State v. Johnson*, 181 Ariz. 346, 349, 890 P.2d 641, 644 (App. 1995). The court may determine the factual basis for a plea by considering “statements made by the defendant; police reports; certified transcripts of the proceedings before the grand jury; and other satisfactory information.” Ariz. R. Crim. P. 26.2(d); *see also* Ariz. R. Crim. P. 17.3. If after considering such information, a factual basis is not established, the court must reject the plea. *See* Ariz. R. Crim. P. 26.2(d). But if a sufficient factual basis is established, it need not do so.

¶3 Here, although the factual basis presented at the change-of-plea hearing was ostensibly brief, the presentence investigation report, which the trial court referred to expressly at the change-of-plea hearing¹ and by reference at sentencing, provided a detailed factual summary of both incidents based on Phoenix Police Department reports.

¹The presentence report had been prepared a few months before the change-of-plea hearing following an earlier guilty plea by petitioner that subsequently was withdrawn.

Moreover, at the change-of-plea hearing, DeJesus acknowledged his attorney had explained the plea agreements to him, and that he had reviewed, initialed and signed them. And, after defense counsel presented the factual basis, the judge asked DeJesus, “[D]id you do those things?” He responded, “Yes.” Accordingly, we conclude the court correctly found “[t]he record supports the factual basis for both guilty pleas.”

¶4 In addition, DeJesus presents for the first time on review claims of ineffective assistance of trial and appellate counsel. We will not consider on review issues or arguments that have not been properly presented to or decided by the trial court. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see also* Ariz. R. Crim. P. 32.9(c) (“party aggrieved may petition the appropriate appellate court for review of the actions of the trial court”).

¶5 Although we grant the petition for review, relief is denied.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge